

**Tac/Temps and the Philadelphia Coca-Cola Bottling Company, Joint Employers, and Teamsters Local 830, a/w International Brotherhood of Teamsters, AFL-CIO, Petitioner. Case 4-RC-18211**

September 15, 1994

**DECISION GRANTING REVIEW, ORDER,  
AND DIRECTION OF ELECTION**

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND DEVANEY

On October 20, 1993, the Regional Director for Region 4 issued his Decision and Order in this proceeding in which he found inappropriate the Petitioner's requested unit of full-time and part-time checkers at Coca-Cola's Gould, Unity, and Folcroft facilities and dismissed the instant petition. The Regional Director dismissed the petition on the ground that the checker employees are guards within the meaning of Section 9(b)(3) of the Act.<sup>1</sup> The Petitioner filed a timely request for review of the dismissal and the Employer filed an opposition to the Petitioner's request.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has duly considered this matter and has decided to grant the request for review as it raises substantial issues warranting review. Having carefully considered the entire record in this matter, we find, contrary to the Regional Director, that the petitioned-for checkers are not statutory guards for the reasons set forth below.

Coca-Cola distributes soft drinks, juices, and water products to small and major grocery stores, convenience stores and gas stations from its three facilities. In 1990, Coca-Cola discovered that a substantial amount of its product was being stolen in its delivery process. In 1991, based on a consultant's recommendation, Coca-Cola changed its use of checkers and the checking procedure, and hired additional checkers from Tac/Temps.<sup>2</sup>

The checkers' duties consist of certifying that the correct amount of a product is on a route truck or tractor trailer before and after deliveries. At the Gould facility, which handles smaller deliveries, the route trucks are checked twice. Beginning at midnight, the checkers count the product on each truck, record the

count on a checkout sheet, compare the observed count with the numbers on the "Load Request Forms," note and report any discrepancies to the plant superintendent, and sign the checkout sheet. When the delivery/merchandisers arrive at about 6 a.m., they also physically count the product and compare findings with a load sheet generated by a Norand computer.<sup>3</sup> If there are discrepancies, the delivery/merchandisers consult with the checkers, who may adjust the product count. Once the count is reconciled, the checkers at the checker station review the checkout sheet and the load request form for accuracy, and activate the delivery/merchandisers' Norands by entering a security code. The security code is changed daily and is known not only by the checkers, but also the office manager and the reconciliation clerk.<sup>4</sup> The delivery/merchandisers cannot begin their routes until the Norand is activated.

When the delivery/merchandisers return from completing their daily routes, the checkers at the Gould and the Folcroft facilities physically count and record products returned, empty trays and damaged products, and then print out "Ending Load" documents. If the product count agrees, then the checkers enter the security code into the Norand. The delivery/merchandisers cannot leave the facilities until the checkers enter the code. The checkers report discrepancies to the route manager on duty. Any discipline is handled by management.

At the Unity facility, which handles bulk deliveries to chain grocery stores and other large companies, the checkers certify that the orders are ready to be loaded onto trailers once the orders are checked against the load request forms. After the products are loaded, the checkers re-count the orders for accuracy. During the checkin procedure, the checkers count the product, log any damaged product, and verify that the totals match. Any discrepancies in the checkout or checkin procedures are reported to management by the checkers.

When seeking checkers, Coca-Cola has placed advertisements in the newspaper under the clerical classification. One of these advertisements stated that it sought "punctual, reliable individuals . . . [with] good math aptitude to accurately count product on our trucks, and ability to work outside throughout the year, climbing on trucks to do correct counts."

Coca-Cola also utilizes uniformed security guards who primarily man the guard station. These guards are

<sup>1</sup>The Petitioner currently represents Coca-Cola sales representatives, delivery/merchandisers, consumer route drivers, warehouse employees, forklift operators, and other production and maintenance employees at Coca-Cola's three facilities located in the Philadelphia, Pennsylvania area.

<sup>2</sup>Prior to that time, Coca-Cola only used checkers in the afternoon to review, certify, and return products. Since about 1986, the Employer has hired checkers from Tac/Temps, a joint employer of the current checkers.

<sup>3</sup>The Norand acts as an inventory checking system which reflects all the products that are to be loaded for delivery. It also contains pertinent sales information such as customers' account numbers, addresses, phone numbers, and the total number of cases for delivery to each customer.

<sup>4</sup>At the Folcroft facility, the checkout duties of the checkers are the same except the product is checked only in the mornings, while the drivers are present. The truck leaves the facility once the count is completed. There is no final checker station at Folcroft.

responsible for the security of the physical building, and they arm and disarm the alarm systems. They log in who comes and goes and inspect all vehicles upon exit. At the Gould building, a checker relieves the guard for brief breaks during the day and at 5:30 p.m. so that the guard can secure the lobby doors and set the alarms. At that time the checker performs the guard's checkout functions and monitors surveillance cameras. The guards have keys to the facility, but the checkers do not.

In finding the checkers to be guards, the Regional Director noted that they were hired for the express purpose of ensuring that no unaccounted product leaves Coca-Cola's premises, and they are responsible for monitoring the shipment of Coca-Cola's products to discover and prevent the theft of the products by other employees. The Regional Director found these duties not to be incidental to normal clerical functions because certain employees were discharged after checkers reported to management that employees stole products, placed extra cases of products on trucks, and offered checkers money to overstate the number of cases returned. Further, the Regional Director also noted that although the checkers do not carry weapons or directly work with the uniformed security guards, the checkers substitute for the guards when the guards take brief breaks and when they secure the buildings. The Regional Director concluded that the checkers protect the Employer's property and accordingly are guards as defined in the Act.

In its request for review, the Petitioner contends that the checkers' primary duty is primarily clerical in nature and that they only ensure that the trucks have proper loads so that customers can be served efficiently and effectively. The Petitioner also contends that the checkers do not enforce rules to protect Coca-Cola's property because they do not perform traditional security or police-type functions as do the security guards. The Petitioner asserts that the checkers do not patrol Coca-Cola's premises or make rounds, possess keys to the facility, or set or disarm security devices. The checkers also are not charged with protecting the safety of other employees.

Contrary to the Regional Director, we agree with the Petitioner that the checkers are not guards as defined by Section 9(b)(3) of the Act. Although the checkers have guard-like functions, we find that the protection of Coca-Cola's property is incidental to the checkers' primary clerical function of certifying that the correct product amount is on the outgoing and incoming delivery trucks.

Section 9(b)(3) of the Act defines a guard as "any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises. . . ." See *J. C. Penney Co.*, 312

NLRB 32 (1993). Although Section 9(b)(3) of the Act defines a guard as an individual employed to protect the employer's property and enforce its rules against employees, the Board has held that certain checkers were not statutory guards because they performed duties "ordinarily associated with a clerical checking function and protect[ed] the Employer's property solely as an incident to such duties; and that any duties the checkers have to report untoward occurrences are shared by all of the Employer's employees." *Pepsi-Cola Bottling Co. of Cincinnati*, 189 NLRB 105 fn. 1 (1971). Similarly, we find that the duties of the checkers in the instant case are also ordinarily associated with clerical functions and that their duty to protect Coca-Cola's property is incidental to their primary duties. *Lion Country Safari*, 246 NLRB 156 (1979).

There is no evidence that the checkers are responsible for the security of Coca-Cola's products. Rather, the evidence shows that the checkers are charged merely with indicating to management that there is a discrepancy in the product count. It is management, and not the checkers, that then determines whether a theft has occurred and whether it warrants disciplinary action. The checkers in the instant case do not enforce specific rules concerning theft or investigate thefts; they merely report discrepancies.<sup>5</sup> A mere reporting function does not compel a finding of guard status. See *Lion Country Safari*, supra.<sup>6</sup>

The record shows that in addition to the checkers, the delivery/merchandisers also physically count and verify Coca-Cola's products for accuracy and, presumably, in part to prevent theft. The Board has held that it will not exclude from nonguard status employees whose duty to protect an employer's property is shared by all employees and is incidental to their nonguard status. *Lion Country Safari*, supra; *Pepsi-Cola Bottling Co. of Cincinnati*, supra.

Additionally, the fact that some checkers occasionally substitute for the guards while the guards take a break or secure the building does not compel a finding that the checkers are statutory guards or show that they would have divided loyalties at times of labor unrest. This sporadic substitution is not a substantial part of

<sup>5</sup> *The Broadway*, 215 NLRB 46 (1974), cited by the Regional Director, is distinguishable. In that case the duties of the fitting room checkers included enforcing a specific rule to protect the employer's property (four garments to a fitting room) and reporting suspicious activity. The checkers in the instant case merely count the product and report discrepancies which may occur for any number of reasons. They do not directly enforce any rules concerning theft.

<sup>6</sup> In finding the checkers to be guards the Regional Director relied on the fact that they were hired with the specific purpose of meeting Coca-Cola's security needs. We note, however, that Coca-Cola did not advertise for guards or individuals with security experience. Rather, the evidence shows that Coca-Cola's advertisement for checkers was placed in the clerical classification of the newspaper, and that it sought individuals who were reliable, punctual, and possessed good math aptitude.

the checkers' duties, but is incidental to their clerical checking functions of counting and verifying products.<sup>7</sup>

In *Lion Country Safari*, 225 NLRB 969, 970 (1976), the Board stated that "the separation of guards and other employees for the purpose of union representation was intended to avoid conflicting loyalties, and to insure an employer that he would have a core of plant protection employees, during a period of industrial unrest and strikes." Here, the duties of the checkers are to count the product and verify that the correct amount of the product is on the trucks. "These are not the circumstances in which Congress felt conflicting loyalties might exist." *Id.*

For the foregoing reasons, we find that the checkers are not guards within the meaning of Section 9(b)(3)

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<sup>7</sup> Cf. *Raymond Metal Products Co.*, 223 NLRB 127 (1976), relied on by the Regional Director, in which storeroom clerks who spent at least 25 percent of their working time substituting for guards were found to be guards.

of the Act and therefore the Petitioner is not precluded from representing them. Accordingly, we shall reinstate the petition and direct an election in the following unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full and part-time checkers employed by Tac/Temps and assigned to The Philadelphia Coca-Cola Bottling Company at 725 E. Erie Ave. and 1520 Chester Pike, 19032, Folcroft, PA [Gould, Folcroft, and Unity facilities]; excluding all other employees including office/clerical, guards and supervisors as defined in the Act.

#### ORDER

The petition is reinstated and the case is remanded to the Regional Director for the purpose of conducting an election in the petitioned-for unit.

[Direction of Election omitted from publication.]